

IN THE COURT OF THE SENIOR CIVIL JUDGE AND ACJM,

KARKALA

Present: Smt.Sharmila C.S., B.A.L., LL.M.,
Senior Civil Judge and ACJM, Karkala.

Dated: This the 6th day of January, 2026.

F.D.P.No.13/2020

1. Smt. Sujatha,
Aged about 56 years,
D/o. Smt. Chindu Bai,

2. Sri. Shreepathi,
Aged about 30 years,
S/o. Smt . Sujatha,

3. Suprabha,
Aged 26 years,
D/o. Smt. Sujatha,

“Srinivas”, Kanangi, Hirgana Village,
Karkala Taluk, Udupi District.

2 and 3 are represented by their
Mother and G.P.A. Holder, Smt. Sujatha,

Smt. Chindu (deceased - 1st defendant)

4. Sri. Shivaramachandra K.,
Aged about 66 years,
S/o. Late Smt. Chindu Bai,
Sourabha, D.No.4-209/7,
Vishwasnagar, Next to Shakthi Nagar,
Hebri Road, Jodurasthe,
Hirgana-576 117.

5. Smt. Shakunthala,
Aged about 63 years,

D/o. Smt. Chindu Bai,
Basrikatte, Honnagudi, Koppa,
Chickmagalore-577 114.

6. Sri. Lakshmikanth,
Aged about 35 years,
S/o. Smt. Shakunthala,
Represented by mother and G.P.A.
Holder Smt. Shakunthala,
7. Sri. Sureshchandra K.,
Aged about 61 years,
S/o. Late Smt. Chindu Bai,
Sapthagiri Srinivasa Krupa Kanangi,
Hirgana Village and Post,
Karkala taluk.
Represented by his brother and
G.P.A. holder Sri. K. Shivaramachandra.
8. Sri. Sathischandra K,
aged about 58 years,
S/o. Late Smt. Chindu Bai.
Sapthagiri Srinivasa Krupa Kanangi,
Hirgana village and post, Karkala taluk,
Represented by his brother
and G.P.A. holder Sri. K. Shivaramachandra.
9. Sri. Dineshchandra K,
aged about 57 years,
S/o. Late Smt. Chindu Bai,
Sapthagiri Srinivasa Krupa Kanagi,
Hirgana village and post, Karkala taluk.
Represented by his brother and G.P.A.
Holder Sri. K. Shivaramachandra.
10. Smt. Sarvani,
aged about 55 years,
D/o. Late Smt. Chindu Bai.
"Srinivas Kripa", Kanangi, Hirgana
Village, Karkala taluk, Udupi district.

11. Anusha, aged 24 years,
12. Gururaj, aged about 18 years.

11 & 12 are the children of Smt. Sarvani.

11 & 12 are represented by their
G.P.A. holder, mother Smt. Sarvani.
And are residing at Flat No. 7732,
197/A Vainatey CHS Ltd., Kannamwar
Nagar 2, Opp: Vikhroli Court.
Vikhroli East: Mumbai – 400 083

13. Smt. Rathi,
W/o. Late Krishna K.
aged about 76 years,
Srinivas Kripa, Kanangi,
Hirgana, Karkala taluk – 576 117.
14. Smt. Shailaja
aged about 52 years,
W/o. Ananda N.
Antara House”, Chibidre, Kakkinje,
Belthangady taluk.
15. Smt. Bhanumathi K,
aged about 47 years,
349, Bannadka, Moorur,
Hirgana, Karkala taluk – 576 117.
16. Sri. Prakash,
aged about 46 years,
Anupritha CHS, RM 105, B-Wing,
Room No. 16, Near Mamtha Hospital
MIDC, Dombivili East, Thane-421 201,
Maharashtra.
17. Sri. Pradeep K,
aged about 45 years.

S/o. Krishna K.
Srinivas Kripa, Kanangi,
Hirgana, Karkala taluk-576 117.

18. Sri. Prasanna k
aged about 43 years.
S/o. Krishna K.,
3-57, Srinivasa Kripa Kanangi,
Hirgana, Karkala – 576 117.
19. Smt. Manjula,
aged about 40 years,
W/o Bhaskar Poojari,
Near Shiv Temple, Amamagar, Chanod, Vapi,
Ardi, Valsad, Gujrath-396195.

14 to 19 are the children of Late Sri. Krishna K.
No. 13, 14, 15 and 17, 18 and 19 are
represented by their G.P.A. holder
Mr. Prakash, 16th petitioner.

Sri. H. Shivanna(deceased-18th defendant)

20. Smt. Sunanda,
Aged about 76 years,
W/o. Late H. Shivanna
Srinivasa Krupa Kanangi,
Hirgana village and post, Karkala taluk.
Represented by her brother and G.P.A.
Holder Smt. Shashikanth
21. Smt. Snehalatha,
Aged about 60 years.
Sourabha, D.No. 4-209/7
Vishwasnagar, Next to Shakthi Nagar,
Hebri road, Joduraste, Hirgana-576 117.
22. Sri. Shashikanth,
Aged about 57 years.
Sri Nivasa, Angadibettu,

Near Adhishakthi Rice Mill, Hirgana post,
Karkala taluk- 576 117.

23. Smt. Sumalatha,
Aged about 51 years.
W/o. Krishna,
Sapthagiri Srinivasa Krupa Kanangi,
Hirgana village and post, Karkala taluk.
Represented by her brother and G.P.A.
Holder Smt. Shashikanth
24. Sri. Sharath,
Aged about 48 years.
Residing at 3-335, Kukkundoor village,
Karkala taluk, Udupi district.
Represented by her brother and G.P.A.
Holder Smt. Shashikanth.
- 21 to 24 are the children of Late H. Shivanna.**
25. Sri. K. Sheena (since deceased),
Aged about 83 years,
S/o. Late Koosu Poojarthi.
2-188, Hekyarottu House,
Valpady Village and post,
Moodabidri taluk, D.K.
- (a) Mrs. Sunanda,
Aged about 76 years,
W/o. Late K. Sheena Poojary.
- (b) Mrs. K. Malini,
Aged about 53 years.
- (c) Mrs. Suvasini,
Aged about 51 years.
- (d) Mr. Praveen Bhat,
Aged about 49 years.
- (e) Mr. Prashanth Kumar,

i.	Provision under which the application is filed	Section 54 of CPC
ii.	Relief sought for	To set aside commission report
iii.	The date on which the application is filed	12-06-2025
iv.	Number of the application	I.A.No.7
v.	The date on which the objections are filed by different opponents	22-07-2025
vi.	The date on which the orders were passed on the said application.	06-01-2026

ORDER ON I.A.NO.7 UNDER SECTION 54 OF C.P.C.

Application is filed by the respondent seeking to set aside the Advocate commissioner's Division report dated 16-03-22 .

2. In the memo of fact, it is stated that as held by the Hon'ble High court of Karnataka in RSA 1223 of 2021, dated 28-02-2024, the division has to be effected by appointment of a Revenue Officer not below the rank of Tahsildar and does not permit appointment of an Advocate as commissioner and prays to allow the I.A.

3. Per contra, counsel for the petitioners objected that the application is not maintainable and relies upon the other

authorities of the Hon'ble High court , and prays to dismiss the I.A.

4. Heard from the counsels for petitioners and respondent.

5. The following points arise for my determination.

“Whether there are grounds made out to set aside the court commissioner’s report in view of appointment of advocate as court commissioner as a bar under Section 54 of C.P.C.?”

6. My answer to the above point is in negative for the following-

REASONS

7. This is the Final decree proceedings, to execute the preliminary decree passed in O.S.No.18/2009. The commissioner has submitted the report, where an advocate of the bar has been appointed and submitted his report. Now the application is filed to set aside the said report.

8. In this regard, the counsel for the respondent relies upon the authority of the Hon'ble High court of Karnataka in

RSA NO.1223 of 2021, dt. 28-02-24, wherein it is held that under section 54 of the CPC, partition has to be effected on the report of a revenue officer, not below the rank of Tahsildar, as the court may appoint as commissioner and not permissible to appoint an Advocate as court commissioner, which needs to be accepted, which is in view of amendment to section 54 of CPC.

9. As against this, the counsel for the petitioner relies upon the following two authorities of the Hon'ble High court of Karnataka which are as under.

1. In ILR 2016 Karnataka 1180 , in “Lagama Beerasidda Pujeri vs. Khanappa Malakari Kotre and others” ,
2. 2018SCC online Kar 4468, In Kallappa Balappa Deshnr and others, vs. Yallappa Shattu Deshanoor and others.

In both the cases, the discretionary power given to the civil court to call for a report of a revenue officer is upheld.

10. An amendment to the Code of Civil Procedure is brought and section 54 is substituted vide section 2 of 1998 Amendment Act. The above two authorities relied upon by the counsel for the petitioner was after the Amendment Act and not

prior to that. In view of the same, the court in its discretion has appointed the advocate court commissioner to assist the surveyor measuring the properties and submit the report. The Advocate is only to assist the surveyor and is not a capable person to measure the land and divide the properties.

11. Now as per the RSA No. 1223 of 2021, the advocate court commissioner need not be appointed, which deviates from the above authorities. This court is bind by the said Order of the Hon'ble High court. But the fact is when the amendment to section 54 was brought out in the year 1998, and the discretionary power to the civil court was conferred upon by the above two and several other authorities even of the Hon'ble Supreme court and finally, the respondents have not objected for the appointment of the court commissioner, who has also been cross examined, cannot now, after lapse of nearly 5 years take the defence of section 54 of the Code of Civil Procedure. Even the court commissioner was cross examined by the counsels appearing for the parties. Therefore still the report of the surveyor needs to be accepted by this court.

12. Of course, the appointment of the advocate can be one ground to reject the report, but not the sole ground for the same. The court has to go through the report and satisfy itself regarding the fair division of the property as per the good and the bad soil and then come to the conclusion.

13. It is also pertinent to note here that a writ was filed by the petitioner before the Hon'ble High court of Karnataka in W.P. No.7118 of 2023, which has been dismissed. No where the said question was challenged by the respondent or the petitioners before the said appellate court, till it was decided in 07.06.23. Therefore, this version of the counsel for the respondent does not hold any water.

14. The report of the court commissioner is already before the court. The respondent ought to have objected for the appointment of the court commissioner relying upon section 54 of the CPC. Hence, at this stage, the court cannot go into the fact that the court commissioner's report can or cannot be rejected on the sole ground of appointment of the Advocate as court commissioner. The respondent cannot take advantage of his own mistake in not objecting for the appointment of the

advocate court commissioner on section 54 of the CPC. Hence, holding that there are no sufficient grounds made out in order to reject the court commissioner's report on the ground of amendment to CPC, the above point is answered in negative.

15. In view of the above reasoning, I proceed to pass the following :

ORDER

I.A.No.7 filed by the applicant/respondent under Section 54 of C.P.C. is here with rejected.

(Typed by me, corrected and then pronounced in Open Court on this the 6th day of January, 2026.)

(SHARMILA C.S.)
Senior Civil Judge & ACJM, Karkala.